REMARKS/ARGUMENTS

The Applicant thanks the Examiner for the telephonic interview, which took place on or about January 24, 2007. During the interview with Examiner Lashley and Supervisory Examiner Barron, Claims 6-21 and Claims 30-31 and the prior art were discussed. Corrections to grammatical and spelling errors for Claims 14, 19 and 30 were agreed.

Claim 6, as discussed during the interview, is listed above, and recited here:

"A method for protecting a digital signal, comprising the steps of:

providing a digital signal comprising digital data and file format information;

creating a predetermined key that manipulates the file format information; and

manipulating the file format information using the predetermined key."

As discussed during the interview, Borgelt describes a means for using public key cryptography to "produce a password that enables an embedded software program within ... [one specific] ... communications device" (Borgelt at Col. 2 ll. 66-67; Col. 4 ll. 64-65; and, Col. 5 ll. 55-58). Borgelt does not teach manipulating a file format of a signal with a key. Applicant pointed out the significant differences between encryption, including that taught by Borgelt, and the file format manipulations of the instant invention[s] during the interview. By relying on encryption to restrict access and prevent observation, Borgelt cannot suggest or anticipate the instant invention[s]. As the claimed invention[s] are readily understood by one of ordinary skill in the art, it was pointed out that there is broad support for the language of the claims in the specification as originally filed.

See MPEP § 2111 "During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." >The Federal Circuit's *en banc* decision in *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) expressly recognized that the USPTO employs the "broadest reasonable interpretation" standard: The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction "in light of the specification as it would be

interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364[, 70 USPQ2d 1827] (Fed. Cir. 2004).

See MPEP § 2173.01 "A fundamental principle contained in 35 U.S.C. 112, second paragraph is that applicants are their own lexicographers. They can define in the claims what they regard as their invention essentially in whatever terms they choose so long as **>any special meaning assigned to a term is clearly set forth in the specification. See MPEP § 2111.01.< Applicant may use functional language, alternative expressions, negative limitations, or any style of expression or format of claim which makes clear the boundaries of the subject matter for which protection is sought. As noted by the court in *In re Swinehart*, 439 F.2d 210, 160 USPQ 226 (CCPA 1971), a claim may not be rejected solely because of the type of language used to define the subject matter for which patent protection is sought."

See MPEP § 2173.02 "The examiner's focus during examination of claims for compliance with the requirement for definiteness of 35 U.S.C. 112, second paragraph, is whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available. When the examiner is satisfied that patentable subject matter is disclosed, and it is apparent to the examiner that the claims are directed to such patentable subject matter, he or she should allow claims which define the patentable subject matter with a reasonable degree of particularity and distinctness. Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire. Examiners are encouraged to suggest claim language to applicants to improve the clarity or precision of the language used, but should not reject claims or insist on their own preferences if other modes of expression selected by applicants satisfy the statutory requirement."

Claim Objections

Claim 14 is currently amended for clarification so the claim objection is moot. Applicant thanks the Examiner.

Claim 19 is currently amended to correct grammatical and spelling errors not for reasons of patentability. Applicant thanks the Examiner.

See MPEP 707.07(j) states: "When, during the examination of a *pro se* application it becomes apparent to the examiner that there is patentable subject matter disclosed in the application, the examiner should draft one or more claims for the applicant and indicate in his or her action that claims would be allowed if incorporated in the application by amendment." Applicant is proceeding *pro se* and requests clarification on how the cited claims can be rewritten if there continue to be objections.

Rejections under 35 U.S.C. § 112 second paragraph

Claims 19 and 30-31

Applicant respectfully traverses the rejection of Claim 19 and Claims 30-31, under 35 USC § 112 second paragraph.

Though the Applicant contends that one of ordinary skill in the art will readily understand the claims as originally presented, the Applicant amended the claims in accordance with the discussion with the Examiner. So the 35 USC § 112 second paragraph rejections are moot and the Applicant respectfully requests that they be withdrawn. The clarification is not meant to result in any prosecution history estoppel.

Rejections under 35 U.S.C. § 102

§ 102 Rejections based on U.S. Patent 5,398,285 ("Borgelt")

Claims 6-21 and 30-31, stand rejected as allegedly anticipated by U.S. Patent No. 5,398,285 issued to Borgelt et al. (thereafter "Borgelt"). See Page 5 of the November 6, 2006 Office Action.

Claims 6-21, and 30-31

In order for a reference to anticipate a claim, the reference must disclose each and every limitation of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation. See *Atlas Powder Co. v. Ireco Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1479, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994). Independent Claim 6 (and all claims depending therefrom) recites [emphasis added]: "A method for protecting a digital signal, comprising the steps of: providing a **digital signal comprising** *digital data and file format information*; *creating a predetermined key that manipulates the file format information*; and **manipulating the file format information using the predetermined key.**" The Section 102 rejection of Claim 6 (and all claims depending therefrom) is improper for at least the reason that Borgelt fails to disclose a "digital signal comprising digital data and file format information".

Contrary to the Examiner's assertion that Borgelt's "software program equivalent to digital signal" (November 6, 2006 Office Action at Page 5), Applicant respectfully disagrees. Borgelt discloses "passwords" to *enable access* to "an embedded software program" using a public key encryption process (Borgelt at Abstract; Col. 1 ll. 34-42; Col. 2 ll. 7-11; Col. 2 ll. 63-67; Col. 3 ll. 3-6; Col. 5 ll. 35-42; and Col. 5 ll. 55-65). Borgelt's "key" does not "manipulate the file format information"—it is used to generate a password (Borgelt at Abstract; Col. 2 ll. 7-11; Col. 2 ll. 63-67; Col. 3 ll. 50 – Col. 4 ll. 5; Col. 4 ll. 64-65; Col. 5 ll. 35-42; and Col. 5 ll. 55-65). The present invention[s] is not so limited. For these reasons, the Section 102 rejections must be withdrawn.

Borgelt teaches away from the present invention[s] by preventing access to data through encryption. Encryption acts *on* data, regardless of how "file format information" structures or organizes it—ensuring, as is understood by one of ordinary skill in the art, that the meaning or context of the encrypted data, whether text, audio, image, content, etc., is *unintelligible*. Each of Borgelt's users inherently requires specific password[s] authorized in advance to access encrypted data (Borgelt, Col. 2 ll. 7-11; Col. 4 ll. 64-65; Col. 5 ll. 55-65). Encrypted data logically has no value "as is"—it is *unintelligible*. This teaches

away from encouraging use or enabling demand for manipulated or scrambled "digital signals" of the instant invention, including instances without prior authorization or payment inherent to Borgelt.

Next, Applicant respectfully suggests that none of the prior art references, including Borgelt, discloses a "predetermined key". Too, the step of "creating a predetermined key that manipulates the file format information" is absent in the cited references and prior art. For these additional reasons Applicant respectfully submits the Section 102 rejections must be withdrawn. As is understood by one with ordinary skill in the art, a key is at least an index of functions-- including the "mask sets" of Independent Claim 20 (and the claims depending therefrom) and the "frames" of Independent Claim 30 (and the claims depending therefrom). With regards to Independent Claim 20 (and all claims depending therefrom) the arguments made above also apply—Borgelt neither discloses nor anticipates a "digital signal", a "predetermined key", "file format" and, the additional claim limitation, "mask set" as required by the claimed invention. Independent Claim 30 (and all claims depending therefrom) requires the further claim limitation "manipulating the file format information using the predetermined key in at least two of the plurality of frames, such that the digital data will be perceived by a human as noticeably altered if it is played without using a decode key to restore the file format information to a prior state". These additional claim limitations are not taught by Borgelt or the prior art.

As disclosed previously and in at least the specification, the "digital signal" of the present invention need not be encrypted— the data is manipulated to *encourage* observers to request said "key". By way of example, a plurality of versions of a given manipulated "digital signal" may be observed-- each of the plurality of versions potentially having separate associated keys and manipulations appealing to a plurality of users. Even lacking keys or prior authorization, the manipulated "digital signal" observers of the present invention, including the "unauthorized parties" of Borgelt and the prior art, are able *to access the content* because its file format is manipulated not encrypted. With observation, as taught herein, users can make decisions regarding interest in observing the signal in a prior, or un-manipulated, state, governed by at least one associated key. Encryption prevents access and observation: the signal is encrypted or it is not. Thus encryption cannot provide layered security, or a plurality of scrambled states, as taught by the present invention. At least two further improvements over the art include: 1) advanced knowledge of the manipulated data *is not* required and 2) any conventional viewer or player can render the manipulated data—in contrast with encrypted data which would inherently appear random or pseudo random.

The invention[s] disclosed herein thus enable wider distribution of protected content resulting in monitoring, metering and analysis of "digital signals" on, for example, a per-copy, per-subscriber, per-broadcaster, per-

scrambled state, per-file format manipulation, per-computer, per-signal or per-channel basis, or similar level of granularity. Protection thus comes from manipulating the file format of any given digital signal in a manner that will induce or encourage potential consumers to inquire, seek or purchase the keys used to manipulate the signal. In view of the above comments, it is respectfully submitted that the cited references do not anticipate the invention as claimed. Thus, the Applicant respectfully requests the Section 102 rejections be withdrawn for Independent Claim 6, 20 & 30 (and all claims depending therefrom). The claims that depend therefrom, namely, Claims 7-19, 21 & 31 are also allowable. The Applicant's silence as to the Examiner's comments is not indicative of acquiescence to the stated grounds of rejection.
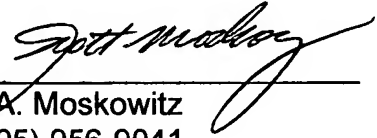
Conclusion

Applicant maintains that this application is in condition for allowance, and such disposition is earnestly solicited. If the Examiner believes that an interview with the Applicant, either by telephone or in person, would further prosecution of this application, we would welcome the opportunity for such an interview.

It is believed that no other fees are required to ensure entry and consideration of this response.

Respectfully submitted,

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By: _____

Scott A. Moskowitz
Tel (305) 956-9041
Fax (305) 956-9042